



MEDICARE LAW ALWAYS APPLIES

Medicare Law:

By law, employers are required to complete a questionnaire, the IRS/SSA/CMS Data Match, on the group health plan that Medicare-eligible workers and their spouses choose. The Data Match identifies situations where another payer is primary to Medicare.

Working Aged (Medicare beneficiaries age 65 or older) and Employer Group Health Plan (GHP):

- *Individual is age 65 or older – is covered by a GHP through current employment or spouse’s current employment AND the employer has less than 20 employees:*

Medicare pays Primary, GHP pays secondary

- *Individual is age 65 or older – is covered by a GHP through current employment or spouse’s current employment AND the employer has 20 or more employees (or at least one employer is a multi-employer group that employs 20 or more individuals):*

GHP pays Primary. Medicare pays secondary

* Current Employment is defined as those who receive W2 forms, excluding any independent contractors and religious who are covered under the health plan through their Order.

Primary Payer determination is made following Medicare rules, **as Medicare law always applies**.

The Trust follows the same format as the CMS Data Match questionnaire to assist in rendering the Primary vs. Secondary determination.

Below illustrates how the 20/20 rule works.

Assume an employer employed 20 or more employees for all of 2016 and 2017.

For the years 2018 and 2019, the employer always had 19 or less than 20 employees.

For the first 6 months of 2020 the employer employed over 19 employees.

Medicare would be the secondary payer during all of the calendar year 2017 because there were 20 or more employees during the preceding year, 2016.

Medicare would be secondary for all of 2018 because there were more than 20 employees during all of 2017. Medicare would be the primary payer in 2019 because the employer had 19 or less employees during 2019, and 19 or less in the preceding year, 2018.

Medicare would be the primary payer for the first 20 weeks of 2020. Starting with week 21 of 2020, Medicare would become secondary and remain secondary for the remainder of 2020.

Since the employer employed 20 or more employees for more than 20 weeks in 2020, we also know that Medicare will be secondary for all of 2021.

Calendar Year	Number of Employees	Medicare Primary	Medicare Secondary
2017	20 or more for all of 2016 and 2017		X
2018	19 or less the entire year		X
2019	19 or less the entire year	X	
2020	20 or more through the first 6 months		X <i>(commencing as of week 21)</i>
2021			X